

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
MORGAN C. AND ANN M. JONES }

Appearances:

For Appellants; James B. Russell, Jr.
Attorney at Law

For Respondent: Richard Creeggan
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Morgan C. and Ann M. Jones for refund of personal income tax and penalties in the total amounts of \$81.51, \$315.22, and \$678.30 for the years 1962, 1963, and 1964, respectively. All statutory references herein are to the Revenue and Taxation Code.

The sole question presented by this appeal is whether appellants were residents of California during the years in question for purposes of the California Personal Income Tax Law.

Appellants were originally residents of Texas. During the years in question they had certain property interests in Texas including mineral rights, a farm, and a homestead established in 1960 under Texas law. They were registered to vote in Texas, had Texas drivers' licenses, and Texas automobile registration plates.

The Texas farm was under the control and management of appellants' son, and appellants apparently

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derived **no income therefrom during the years in question.** Their major source of income during these years was on oil royalties from leases of wells located on their Texas property. On federal income tax returns for the years 1963 and 1964, appellant *Morgan C. Jones* indicated that he was retired.

Appellants purchased a residence in Long Beach, California, in 1949. Through the years they admit spending approximately five and one-half months per year in California, primarily-during the winter months. **Mrs. Jones'** sister lived nearby and looked after the house while appellants were away. Appellants also had sons residing in Southern California. While **absent**, from California, the telephone and utilities remained connected to the Long Beach home. Appellants had a regular physician in California who treated them frequently during the years in question. Both appellants had surgery in California during the appeal years, requiring extended stays in this state. **And in 1963 and 1964** appellants had interest income for a savings account in a California bank.

Appellants considered **themselves Texas** residents for the years in question, and consequently they filed no personal income tax returns in California. During the course of an audit, respondent investigated appellants' residency status. Medical records and telephone charges indicated the physical presence of appellants within California for at least .8 months in 1961, 5 months in 1962, 9 months in 1963, and 12 months in 1964. Based upon this and other information, respondent concluded appellants were residents of California for the years 1962, 1963, and 1964. Notice and a demand that returns be filed were sent to appellants in 1966. -When no returns were filed, respondent estimated the tax liability of **appellants**, pursuant to section 18682, on the basis of federal returns for the same years and issued notices of proposed assessment for each of the years, plus the appropriate penalties. Appellants paid the assessments and penalties and filed a claim for refund. Upon respondent's denial of such claims, appellants brought this appeal.

Under section 17041 residents of California are taxed on their entire net income from all sources. A "resident" for purposes of the California Personal Income Tax Law includes "every individual who is in this State for other than a temporary or transitory purpose." (Section 17014, Subd. (e).) Section 17014 also provides that once residency is established, it continues even though the individual is temporarily absent from the state. Section 17016 creates a presumption of residence if an individual is in this state for a total of 9 months during the taxable year, which presumption can be overcome by evidence of only a temporary or transitory purpose.

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We begin with the year 1961. While that year is not in issue in this case, if residence was established in 1961 the burden is upon appellants to show that any absence from the state in the years 1962, 1963, or 1964 was for other than a temporary purpose. Absent such a showing their residency continued through those years. (Section 17014; Appeal of Joseph P. and Mary Joy Tarola, Cal. St. Bd. of Equal., Jan. 5, 1965.)

Respondent has determined that appellants were present in California for at least 8 months in 1961. While 8 months will not raise the presumption of residence found in section 17016, we must nevertheless reject appellants' argument that a presumption of nonresidency arises for a period of less than 9 months. (Cal. Admin. Code, tit. 18, reg. 17014-17016(e).) Without the presumption of section 17016, the test is simply the one provided in section 17014; that is, a resident is any individual within this state for other than a temporary or transitory purpose. We have previously held, absent any presumptions, that persons within this state for fewer than 9 months were nonetheless residents, if their closest contacts were with this state. (Appeal of Matthew Berman, Cal. St. Bd. of Equal., June 28, 1965. See also Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

Appellants were in California for 8 months in 1961. They owned a home here and they had close relatives here. They also received medical treatment in this state. The Texas farm was turned over to their son in 1961. All of these facts indicate substantial contacts with this state.

Other than a mere passive investment in Texas property, appellants have produced no evidence to establish comparable contacts with the State of Texas. Various affidavits and oral testimony by friends and relatives of appellants to the effect that they were never present in California for more than five and one-half months during the years 1961 through 1964 are unpersuasive. Not only are such declarations self-serving, but their credibility is inherently suspect in light of appellants' admission that they were in this state for 9 months in 1963 and 12 months in 1964 due to surgery. Appellants stress their lack of business activity in California, but they likewise engaged in no business activity in Texas. Voter registration, automobile registration, drivers' licenses, and a homestead certificate, all from the State of Texas, are urged to show nonresident status. But these items are more indicative of domicile than residency. (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278 [41 Cal. Rptr. 673].)

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After all of the facts are considered we must conclude that appellants were in this state for other than a **temporary** or transitory purpose during the year 1961. Thus during that year they were residents of California.

Turning to the years in question, once residency was established in the year 1961 that status continued through the years 1962, 1963, and 1964 unless appellants can show that any absence from the state during these years was for other than a temporary purpose. (Section 17014.) Appellants have produced no such evidence. **Moreover**, for the years 1963 and 1964, when appellants were in this state for 9 months and 12 months, respectively, the presumption of residence found in section 17016 has in no way been overcome. Under the circumstances, we must conclude, therefore, that appellants were residents of this state **for purposes of the California** Personal Income-Tax Law- **for the** entire period under review.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, **that** the action of the Franchise Tax Board in denying the claims of Morgan C. and Ann M. Jones for refund of personal income tax and penalties in the total amounts of \$81.51, \$315.22, and \$678.30 for the years 1962, 1963, and 1964 respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 24th day of October. , 1972, by- the State- Board of Equalization.

John W. Lynch, Chairman
Geor. H. Jones, Member
William L. Jones, Member
_____, Member
_____, Member

ATTEST: W. W. Smith, Secretary